SINGAPORE REPORTS.

MELAYU RAYA PRESS LIMITED
v.
W. L. BLYTHE THE COLONIAL SECRETARY.

[Orig. Civ. Juris. (Murray-Aynsley, C. J.)
March 9, 1951]

[Singapore — Originating Motion No. 4 of 1951]

Certiorari — Application for Order of certiorari to quash order made by Colonial Secretary withdrawing a licence granted to a company for keeping and using a printing press — Printing Presses Ordinance (Cap. 208).

In this case the applicants sought an Order for certiorari to quash an order made by the Colonial Secretary withdrawing a licence granted to the Company for keeping and using a printing press. At the hearing the preliminary question was gone into as to whether the act of withdrawing the licence was one in respect of which certiorari would lie or if it would lie whether in view of the fact that Section 3(3) of the Printing Presses Ordinance provided for an appeal to the Governor in Council, a right of which the Company had not availed itself, the case was one in which the Court should grant a certiorari.

Held, (1) that the act in question was one with respect to which certiorari lies; (2) that the application must be refused in this case as the applicants had not exhausted their right of appeal.

Cases referred to:—

(1) *Nakkuda Ali v. Jayaratne* 66 T.L.R. 214.

(2) *R. v. Inspector of Taxes for Parish of Kingsland* 8 Tax Cases 327.

APPLICATION for Writ of *Certiorari.*

N. A. Mallal for the plaintiff.

E. P. Shanks (Crown Counsel) for the defendant.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — In this case the Melayu Raya Press Limited seek an order for a *certiorari* quashing the order made by the Colonial Secretary withdrawing a licence granted to the company for keeping and using a printing press. The licence was granted under section 3 of Cap. 208 and withdrawn under powers conferred by the same section. The section reads as follows:—

"3. — (1) The Colonial Secretary may in his discretion grant to any person in the Colony a licence to keep and and use a press for the printing of documents, and may at any time withdraw such licence either permanently or for such period as he thinks fit.

(2) The licence shall be in the prescribed form.

(3) Any person to whom a licence is refused or whose licence is withdrawn may appeal to the Governor in Council.

(4) No person shall keep for use or use any such press without such licence.

(5) For the purposes of this section the occupier of any premises on which any such press is found shall be deemed to have kept the same for use until he proves the contrary.

(6) Every licence granted under subsection (1) shall expire on the thirty-first day of December of each year.

(7) The withdrawal of any licence shall be deemed to be sufficiently communicated to the licensee if a notice of withdrawal is personally served on the person in charge of the printing press."

By arrangement with the Attorney-General the notice of motion for an order *nisi* was served on him and Mr. Shanks, Crown Counsel, appeared at the hearing at which the preliminary question was gone into as to whether the act of withdrawing the licence was one in respect of which *certiorari* would lie, or, if it would lie, whether in view of the fact that the section provided in sub-section (3) for an appeal to the Governor in Council, a right of which the company had not availed itself, the case was one in which the Court should grant a *certiorari.*

The first point turns briefly on whether the act had such a judicial character as made it subject to *certiorari.* On this point there is a great deal of authority in which acts of persons and bodies not in any sense judicial bodies have been held subject to *certiorari,* the distinction in all cases being between acts of a judicial character and acts of a purely executive character. To decide the point is a matter of construction of the legislation conferring the power.

A notable example is a type of power conferred by licensing acts of various kinds. In these various expressions are used conferring powers to licence various things, such as the sale of intoxicating liquors, keeping music halls and keeping places for the exhibition of cinematograph films. In various terms, *e.g.* "the licensing justices may . . . grant justices' licences to such persons as they, in the execution of their powers under this Act and in the exercise of their discretion, deem fit and proper", "in their discretion shall think proper", "a county council may grant licences to such persons as they think fit . . . on such terms and conditions and under such restrictions as . . . the Council may by the respective licences determine", powers were conferred that appeared to be purely discretionary, yet it was held that acts done under the powers conferred by these Acts had a sufficiently judicial character to render them liable to *certiorari.* This was well established before, in the year 1920, the legislature of the Straits Settlements conferred on the Colonial Secretary the powers now under consideration. It has been noted that a certain right of appeal is granted. To talk of an appeal, in my opinion, is out of place except with respect to an act of a judicial character. In the case of an executive act it is possible to go to

a superior and try to persuade him to decide differently but that is in no sense an appeal.

I think that when the legislature conferred these powers they were mindful of the position in England with respect to analogous powers and that they intended to create a similar position here.

I do not think that it makes any difference as a matter of construction of the Ordinance whether the powers are conferred on a holder of an office or on a body of persons whether incorporated or not.

Reliance was placed by Mr. Shanks on the recent Ceylon case of *Nakkuda Ali v. Jayaratne*[1]. I distinguish that case because it turned on the construction of legislation in very different terms. The Judicial Committee did not attempt to upset the very large body of case law which decides that *certiorari* lies in respect of powers created in other terms. I decide, therefore, that the act in question is one with respect to which *certiorari* lies.

That brings me to the second point whether the order asked for should be granted in this case. The general position is that if *certiorari* lies it should be granted *ex debito justitiæ* to a person aggrieved. The proposition is subject to the exception that where a right of appeal lies that right should be exhausted first except where such act was done without jurisdiction. In a fairly modern instance that was applied in an income tax case to a series of cases where an appeal lay not a Court but to an *ad hoc* body, to wit, the General Commissioners of Income Tax, (*R. v. Inspector of Taxes for Parish of Kingsland*[2]). I consider that I should follow that authority and the application should be refused. With costs agreed at $400/- to be paid by applicants.

Application refused.

MOHAMED KUNJU v. ABDUL SAMEED AND ANOTHER

[Orig. Civ. Juris. (Brown, J.) March 8, 1951]

[Singapore — Civil Suit No. 333 of 1949]

Trust — Resulting Trust — Limitation — Trust for a specific purpose — Limitation Ordinance.

The plaintiff in this case applied for a declaration that premises held in the name of P. Hameed (deceased) were held in trust for him.

The plaintiff's case was that as the arrangements for the agreement of tenancy had been made by the plaintiff and the name of P. Hameed had only been inserted by reason of the fact that the plaintiff was unable himself to enter into the agreement, P. Hameed and now his administrators, held the property in trust for him. On this point the plaintiff virtually based his case on **Dyer** v. **Dyer**[1] alleging that the rents were paid by the plaintiff and the property built by him.

The answer of the defendants to this point was that firstly, it was a personal agreement between the Harbour Board and P. Hameed and being a personal agreement, could not be challenged and secondly, that no resulting trust could arise as there was no purchase from which anything could be said to give rise to a resulting trust; thirdly apart from the above, the defendants brought four legal defences: — (a) That the principle of **Gascoigne** v. **Gascoigne**[2] applied in that although the Board's employees might well have been a party to the deception of permitting P. Hameed's name to be used in the agreement while in fact the intention was that the plaintiff should be the tenant, yet the employees could not bind the Board and that as this act was done to get round a Bye-law that the doctrine of **Gascoigne** v. **Gascoigne** applies; (b) that the Statute of Limitation barred the claim; (c) that the doctrine of laches applied as the plaintiff had waited for P. Hameed to die before bringing an action for a declaration and as P. Hameed was the only person who could have given contrary evidence to the plaintiff's that the position of the defendants had been embarrassed by the delay and that therefore the doctrine was brought into effect.

The defendants' answer to these points was that where **Gascoigne** v. **Gascoigne** is sought to be applied it is necessary to positively prove the prohibition and that this had not been done in this case. Secondly, as to limitation, that the Statute of Limitations would only run from the time when there was a breach of duty or a denial of right. Thirdly as to laches, the plaintiff's answer was that for such a defence to succeed, neglect must be proved positively.

Held, (1) that there was a resulting trust of the premises in favour of the plaintiff; (2) that there was nothing fraudulent in the use of the name of P. Hameed for the tenancy by the plaintiff as in this case the purpose of such a bye-law was only to protect the domestic interest of the Harbour Board, the principle of **Gascoigne** v. **Gascoigne** did not apply; (3) that the trust in this case was not for a specific purpose and therefore fell within the scope of Section 9 of the Limitations Ordinance; (4) that the time from which limitation ran in this case was from the date when the plaintiff's position was first challenged and as this was less than six years ago in this case, the suit was not statute barred.

Cases referred to:—

(1) *Dyer v. Dyer* 30 E.R. 42.
(2) *Gascoigne v. Gascoigne* (1918) 1 K.B. 228.
(3) *Cottington v. Fletcher* 26 E.R. 498.
(4) *Khaw Sim Tek v. Chuah Hooi Gnoh Neoh* (1922) 1 A.C. at p. 126.
(5) *C. Kasivisvanathan Chettiar v. C. V. S. Chokalingham Chettiar* (1935) A.C. 163.
(6) *Lau Tai Thye v. Leong Yin Khean* (1934) M.L.J. 110.
(7) *Soar v. Ashwell* (1893) 2 Q.B. 390.
(8) *Re Clay* (1919) 1 Ch. 66.

ACTION.

D. H. Murphy for the plantiff.

M. B. Brash for the defendants.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Brown, J. : — This is a claim against the estate of a deceased person. P. Hameed being dead, the